

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 05-CV-10879-JLT

KIMBERLY GENEREUX,	)	
Plaintiff	)	
	)	<b>PLAINTIFF'S OPPOSITION TO</b>
v.	)	<b>DEFENDANTS' MOTION <i>IN LIMINE</i></b>
	)	<b>TO PRECLUDE USE OF THE 2002</b>
	)	<b>LASHNER, RUSH ASSOCIATES</b>
COLUMBIA SUSSEX CORPORATION,	)	<b><u>AUDIT REPORT</u></b>
STARWOOD HOTELS & RESORTS	)	
WORLDWIDE, INC., and	)	
WESTIN HOTEL MANAGEMENT, L.P.,	)	
Defendants	)	

Kimberly Genereux, the plaintiff, opposes the defendants' motion *in limine* to exclude use of the 2002 Lashner, Rush Associates Audit Report for the following reasons:

1. Lashner, Rush Associates ("LRA") is a third party auditing firm utilized by defendants Starwood and Westin to monitor compliance with hotel brand standards at Starwood and Westin hotels.
2. Contrary to the defendants' position that they do not impose or enforce hotel security standards upon franchised hotels, LRA audits evidence that LRA has monitored compliance with Westin/Starwood security and other standards before, during and after the time of Ms. Genereux' rape.
3. The 2002 LRA Audit evidences that the Westin/Starwood defendants monitored compliance by the employees of franchised hotels even though the defendants deny control over franchisees and their employees. The defendants' control of security at the Westin Casuarina is at issue at bar.

4. The 2002 LRA Audit evidences that the Westin/Starwood defendants monitored compliance by the Westin Casuarina with Westin brand standards relating to security, and that the Westin Casuarina was cited for violating several such standards.

5. The 2002 LRA Audit evidences that notwithstanding the Westin Casuarina's violation of Westin security standards, the defendants took no action to rectify or penalize such violations, despite the fact that the Casuarina was cited for security violations in the 1999, 2000, 2001 and 2002 LRA Audits.

6. Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence". Fed. R. Evid. 401.

7. "All relevant evidence is admissible". Fed. R. Evid. 402.

8. The 2002 LRA Audit is relevant to the liability issues of duty and breach of the standard of care which are contested in the instant action.

9. The 2002 LRA Audit should not be excluded simply because it post-dates the plaintiff's rape by several months. Evidence of conditions post-dating an incident are relevant to demonstrating conditions at the time of the incident. *Brown v. Trustees of Boston University*, 891 F.2d 337, 350 (1<sup>st</sup> Cir. 1990)(discrimination case). This is true especially where the 1999-2002 audits consistently demonstrate the defendants' control

of security conditions and failure to rectify security violations at the Westin Casuarina.

WHEREFORE, the plaintiff respectfully requests that this Court deny the defendants' motion *in limine*.

The Plaintiff,  
By her Attorney,

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April 8, 2008

**CERTIFICATE OF SERVICE**

I, Mark F. Itzkowitz, counsel for the plaintiff, hereby certify that on this date, I made service of the within document by serving it electronically to registered ECF participants and/or by mailing/faxing/hand-delivering a copy of same to non-registered ECF participants as indicated on the Notice of Electronic Filing ("NEF"), upon the following counsel of record:

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s/ Mark F. Itzkowitz  
MARK F. ITZKOWITZ (BBO #248130)

Dated: April 8, 2008